

Minutes of the
Board of Minerals and Environment Meeting
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

March 20, 2008
10:30 a.m. CDT

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard C. Sweetman. The roll was called and a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Linda Hilde, Dennis Landguth, Bob Duxbury, Mike DeMersseman, and Glenn Blumhardt. Pete Bullene participated via telephone conference call in the afternoon.

BOARD MEMBERS ABSENT: Chuck Monson.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM JANUARY 17, 2008, MEETING: Motion by Blumhardt, seconded by DeMersseman, to approve the minutes from the January 17, 2008, Board of Minerals and Environment meeting, as mailed. Motion carried.

MINING ISSUES: Tom Cline, DENR Minerals and Mining Program, was administered the oath by Mike DeMersseman and testified regarding transfer of liability and releases of liability (see attached matrix sheet).

Transfer of Liability

Motion by Duxbury, seconded by Blumhardt, to transfer liability from Weatherton Contracting Co., Inc., Beresford, SD, Mine License No. 88-364, one site in Custer County, to Zandstra Construction, Inc., Rapid City, SD, Mine License No. 84-254. Motion carried.

Releases of Liability

Motion by Hilde, seconded by DeMersseman, to release liability for one site in Beadle County for Dale Fuehrer, Huron, SD, Mine License No. 92-462, and to release liability for one site in Day County for Webster Township, Webster, SD, Mine License No. 96-592. Motion carried.

REQUEST PERMISSION TO ADVERTISE PROPOSED REVISIONS TO ARSD 74:10:03:16: Mac McGillivray, DENR Oil and Gas Program, requested permission to advertise for a public hearing to consider proposed amendments to 74:10:03:16, Procedures for setting surface casing and production casing.

Motion by DeMersseman, seconded by Hilde, to authorize the department to advertise for a public hearing on May 15, 2008, to consider amendments to 74:10:03:16. Motion carried.

REQUEST PERMISSION TO ADVERTISE PROPOSED REVISIONS TO ARSD 74:11:08:
Mike Cepak, DENR Minerals and Mining Program, requested permission to advertise for a public hearing to consider amendments to 74:11:08, Exploration Operation Standards. The department proposes to update the rules for plugging exploration test holes drilled for mineral and uranium exploration permits.

Motion by McCahren, seconded by Blumhardt, to authorize the department to advertise for a public hearing on May 15, 2008, to consider amendments to 74:11:08. Motion carried.

REQUEST PERMISSION TO ADVERTISE PROPOSED REVISIONS TO ARSD 74:29:11:
Mr. Cepak requested permission to advertise for a public hearing to consider amendments to 74:29:11, In-Situ Leach Mining rules, to require an Underground Injection Control (UIC) permit prior to issuance of an in-situ leach mine permit.

Motion by McCahren, seconded by DeMersseman, to authorize the department to advertise for a public hearing on May 15, 2008, to consider amendments to 74:29:11. Motion carried.

OIL AND GAS CASE NOS. 1-2008, 2-2008, and 3-2008, CONTINENTAL RESOURCES, INC.: Chairman Sweetman appointed Dennis Landguth as hearing chairman for these three cases. Mr. Landguth opened the hearing at 11:00 a.m.

Lawrence Bender, attorney from Bismarck, ND, represented Continental Resources.

Roxanne Giedd, Deputy Attorney General, represented the Department of Environment and Natural Resources (DENR).

Mr. Bender stated that Continental intended to combine these three cases into one hearing. Ms. Giedd and the board had no objections.

Case No. 1-2008, is an application for an order of the board allowing the Fowler #1-3H well, located in all of Section 3, T22N, R6E, Harding County, SD, to be an Exception to Field Spacing Order No. 18-97, which established setbacks of 660 feet from the boundary of any spacing unit for horizontal wells in the "B" zone of the Red River formation, Pete's Creek Field.

Case No. 2-2008 is an application to allow horizontal wells to be 500 feet from spacing unit boundaries for a well drilled in the "B" zone of the Red River formation in all of Section 18, T22N, R7E, Harding County, SD.

Case No. 3-2008 is an application to amend any applicable orders or spacing rules to change the minimum distance from the spacing unit boundary from 660 feet to 500 feet for horizontal wells to be drilled in the "B" zone of the Red River formation in all of Section 22, T22N, R6E, Pete's Creek Field, Harding County, SD

Witnesses administered the oath and testifying on behalf of Continental Resources, Inc.:

Levi Olson, Petroleum land man
Robert Johnson, consulting geologist

Exhibits offered and admitted into the record for Continental Resources, Inc.:

Case No. 1-2008

Exhibit L-1 – General locator map – showing location of all three cases
Exhibit L-2 – Land plat
Exhibit L-3 – Ownership summary
Exhibit G-1 – Proposed spacing unit
Exhibit G-2 – Type log, Luff Nygaard 1-7
Exhibit E-1 – Production curve, Fowler 1-3H
Exhibit E-2 – Expected economics, Fowler 1-3H

Case No. 2-2008

Exhibit L2 – Land plat
Exhibit L3 – Ownership summary
Exhibit G-1 – Proposed spacing unit
Exhibit G-2 – Type log, Luff Nygaard 1-7
Exhibit E-1 – Proposed production curve, Luff Nygaard 1-18H
Exhibit E-2 – Expected economics, Luff Nygaard 1-18H

Case No. 3-2008

Exhibit L-2 – Land plat
Exhibit L-3 – Ownership summary
Exhibit G-1 – Proposed spacing unit
Exhibit G-2 – Type log, Luff C-8 EHSRRU
Exhibit E-1 – Proposed production curve, Kopetsky 1-22H
Exhibit E-2 – Expected economics, Kopetsky 1-22H

Mac McGillivray, DENR Oil and Gas Program, was administered the oath and testified on behalf of the Department of Environment and Natural Resources regarding Case Nos. 1-2008, 2-2008, and 3-2008.

Notice of the hearing for these cases was published on February 14 and 21, 2008, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation's Center News. Affidavits of Publication are on file in the Department of Environment and Natural Resources Rapid City office.

The department received no petitions to intervene in any of these cases.

Ms. Giedd offered DENR Exhibit A, GIS map of Harding County showing Pete's Creek Field and surrounding fields, with the locations of these three cases shown by red boxes.

Mr. McGillivray stated that the permit for the Fowler 1-3H (Case No. 1-2008) was issued on May 23, 2007. The original permit had a surface location of 880 feet from the south line and 660 feet from the west line with a projected entry point for the horizontal lateral, which was all within the 660-foot setbacks. The well was drilled on May 26, 2007, and according to the department's records, the well was completed on July 5, 2007.

On December 31, 2007, the department received a notice from Continental Resources requesting that the surface location be changed from 880 feet from the south line and 660 feet from the west line to 340 feet from the south line and 180 feet from the west line. Staff then determined that the horizontal lateral entered the Red River "B" Zone at 520 feet from the south line and 522 feet from the west line.

The original drilling application the department received was consistent with the original Order that applied to this area.

Case Nos. 1-2008 and 3-2008 are requesting that all of the horizontal orders in Pete's Creek field be amended to the 500-foot setback. The only two operators in the field are Continental Resources and Luff Exploration, and Luff Exploration was notified of this request.

Ms. Giedd stated that Case Nos. 1-2008 and 3-2008 request that all of the horizontal orders in Pete's Creek Field be amended to provide for 500-foot setbacks. The department does not have a list of all of the orders for Pete's Creek Field at this time. The department will compile a specific list of the orders being amended for the 500-foot setback for Pete's Creek field so that administratively the department can make sure the correct orders are amended. The list will be presented to the board at its April 17 meeting, and at that time the board will be asked to amend the Findings of Fact, Conclusions of Law, and Orders for these two cases.

Motion by McCahren, seconded by Duxbury, to adopt the Findings of Fact, Conclusions of Law, and Order for Case No. 1-2008, Continental Resources, Inc. pending submission of a listing of the specific orders being amended, and to authorize Mr. Landguth to execute the Orders. Motion carried.

Motion by Duxbury, seconded by Blumhardt, to adopt the Findings of Fact, Conclusions of Law, and Order for Case No. 2-2008, Continental Resources, Inc. and to authorize Mr. Landguth to execute the Order. Motion carried.

Motion by McCahren, seconded by Hilde, to adopt the Findings of Fact, Conclusions of Law, and Order for Case No. 3-2008, Continental Resources, Inc. pending submission of a listing of the specific orders being amended, and to authorize Mr. Landguth to execute the Order. Motion carried.

Mr. Landguth declared the hearing closed.

PREHEARING CONFERENCE IN THE MATTER OF THE APPLICATION BY OTTER
TAIL ON DRAFT PERMITS FOR BIG STONE'S TITLE V AND PSD AIR QUALITY

PERMITS: Lee McCahren, who had previously been appointed hearing chair for this matter requested the parties introduce themselves.

Appearing in person on behalf of Otter Tail Power Company were Chris Madsen, attorney, Penny Shamblin, and Harry (Pete) Johnson.

Appearing in person on behalf of the Department of Environment and Natural Resources were Roxanne Giedd, Deputy Attorney General, Brian Gustafson, and Kyrik Rombough.

Appearing via telephone conference call were Mark Bring, Otter Tail Power Company; Peter Horner and George Hays, attorneys for the Sierra Club; William Koester, attorney for Big Stone City; and Pete Bullene, Board of Minerals and Environment member.

Charles McGuigan, Deputy Attorney General, appeared as counsel for the Board of Minerals and Environment.

The board members introduced themselves.

Ms. Giedd distributed copies of Chapter 74:09:01, Contested Case Procedure, and 74:36, Air Pollution Control Program.

Ms. Giedd pointed out that 74:36:09 deals with Prevention of Significant Deterioration (PSD) Permits and 74:36:05 deals with Title V Permits. She then explained the PSD Permit application process (Attachment 1 of DENR Response to Otter Tail's Motion for Consolidation and Scheduling Order) and the Title V Permit Application Process (Attachment 2 of DENR Response to Otter Tail's Motion for Consolidation and Scheduling Order).

Mr. Madsen requested that board grant a motion to consolidate these two matters for contested case hearing. There were not objections from the parties.

Mr. McCahren granted the motion to consolidate the two permit proceedings.

Discussion took place regarding the appointment of a hearing officer.

Mr. Madsen presented a proposed scheduling order. He requested that the board grant a motion establishing the scheduling order for this matter.

The following schedule was agreed to by the board members and the parties:

| DATE | EVENT/ACTION |
|---|---|
| 30 days after Final Proposed Permit is released by DENR | <ul style="list-style-type: none"> • Deadline to serve petition for contested case. • Deadline to serve petition to intervene • Deadline for parties to serve proper notice of appearance |
| June 2, 2008 | Deadline to complete discovery except for depositions of experts and DENR witnesses. Any interrogatories, requests for production, or other written discovery requests shall be properly served so as to allow answers or responses be provided prior to this deadline. |
| June 16, 2008 | <ul style="list-style-type: none"> • Parties shall disclose the identity of all experts expected to testify in the parties' cases in chief or cases in rebuttal and to provide any information regarding the expert(s) required by SDCL 15-6-26(b) and 15-6-26(e). • Parties shall exchange lists of witnesses expected to testify in the parties' cases in chief or cases in rebuttal and provide a brief summary of their expected testimony. |
| July 2, 2008 | Last day to complete depositions of expert witnesses and DENR witnesses. |
| July 7, 2008 | Deadline to serve dispositive motions and all supporting documents and briefs |
| July 14, 2008 | Deadline to serve briefs and supporting documents in response to any motions served on July 7, 2008. |
| July 16, 2008 | <ul style="list-style-type: none"> • Tour of Big Stone plant for Board and parties. (Time tba). • Public Input Hearing – Milbank, SD (Specific time and place tba) |
| July 17, 2008 | Pre-Hearing conference and motions hearing – Milbank, SD. (Specific time and place tba) |
| August 18 through 29, 2008 | Contested case hearing – Pierre, SD. |

All parties are to facilitate service of correspondence, pleadings, and other documents in this matter by e-mail. All original documents will be provided to the board and filed with the administrative record and transmitted to Mr. McGuigan.

The parties will coordinate with hearing chair McCahren to schedule periodic status conferences to review the status of discovery and any other issues that may arise.

Motion by DeMersseman, seconded by Duxbury, to appoint Lee McCahren as hearing examiner for this matter. Motion carried.

Mr. McCahren declared the prehearing conference adjourned.

OTHER BUSINESS: The next board meeting is April 17, 2008, in Pierre.

A court reporter was present for the Otter Tail prehearing conference and a transcript of the proceedings may be obtained by contacting Capital Reporting Services, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

The hearing was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

ADJOURNMENT: Chairman Sweetman declared the meeting adjourned.

Linda Holt 4-17-08
Secretary Date

RBell 4/17/08
Witness Date

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center
Pierre

Date 3-20-08

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Levi Osen Bismarck, ND Continental Resources

Robert Post Johnson Bismarck, ND

Lawrence R. R. — P.O. Box 155 Bismarck ND " "

Bob Mercer Pierre Newspapers

Mar. A. Orens Pierre S.P.L.

Thomas F Cline JR Pierre SD DENR-M+M-Cons Ag

Gerald (Mac) McGillivray, Rapid City ADNP

MARK ROLFES BIG STONE CITY BSP II

Penny Shamblin Richmond, VA BSP II

Terry Grauman Fergus Falls, MN BSP II

Harry M Johnson Richmond VA BSP II

Chris Madsen Sioux Falls, SD Big Stone II Project

Mike Cepak Pocroe, SD SD DENR

March 20, 2008

| <u>License/Permit Holder</u> | <u>License/ Permit</u> | <u>Site No.</u> | <u>Surety Amt.</u> | <u>Surety No.</u> | <u>Surety Company/Bank</u> | <u>DENR Recommendation</u> |
|------------------------------|------------------------|-----------------|--------------------|-------------------|----------------------------|----------------------------|
|------------------------------|------------------------|-----------------|--------------------|-------------------|----------------------------|----------------------------|

Transfer of Liability:

| | | | | | | |
|--|--------|--|----------|-----------|------------------------------|---------------------|
| Weatherston Contracting Co., Inc. Beresford, SD | 88-364 | | \$20,000 | 141551847 | Continental Casualty Company | Transfer liability. |
|--|--------|--|----------|-----------|------------------------------|---------------------|

364052 SW1/4 Section 20 & NW1/4 Section 29; T6S-R7E, Custer County

Transfer to:

| | | | | | | |
|--|--------|--|----------|-----------|---|--|
| Zandstra Construction Inc. Rapid City, SD | 84-254 | | \$20,000 | 400SP2435 | Travelers Casualty & Surety Company of America | |
|--|--------|--|----------|-----------|---|--|

Releases of Liability:

| | | | | | | |
|---------------------------|--------|--|-------|-------|-----------------------------|--------------------|
| Dale Fuehrer Huron, SD | 92-462 | | \$550 | 64152 | First National Bank, Pierre | Release liability. |
|---------------------------|--------|--|-------|-------|-----------------------------|--------------------|

462001 E1/2 Section 18; T109N-R62W, Beadle County

| | | | | | | |
|---------------------------------|--------|--|--------|----|----|--------------------|
| Webster Township Webster, SD | 96-592 | | EXEMPT | NA | NA | Release liability. |
|---------------------------------|--------|--|--------|----|----|--------------------|

592001 SW1/4 SW1/4 Section 6; T122N-R55W, Day County